

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF SCOTT

OCT 23 2009 *A*

FIRST JUDICIAL DISTRICT

SCOTT COUNTY COURTS

Case Type: Mechanic's Lien Foreclosure

In re M.W. Johnson Construction, Inc.
Mechanic's Lien Foreclosure Litigation

Consolidated Master Court File: 70-CV-09-7343

Judge: Jerome B. Abrams

Superior Masonry & Concrete, Inc.,

Scott County Court File: 70-CV-08-10431

Plaintiff,

vs.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, ORDER FOR SUMMARY
JUDGMENT AND JUDGMENT**

M.W. Johnson Construction, Inc.;
Bounlab Xayarath and Vatsana
Phongsavath; Mortgage Electronic
Registration Systems, Inc.; Bell
America Mortgage, LLC; Wenzel
Plumbing & Heating, Inc.; Elite Waste
Disposal; John Doe and XYZ
Corporation

Defendants.

and

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT
Case Type: Mechanic's Lien Foreclosure

Wenzel Plumbing & Heating, Inc.,

Plaintiff,

vs.

Keybank National Association; Tollefson
Development, Inc.; Bounlab Xayarath and
Vatsana Phongsavath; Mortgage Electronic
Registration Systems, Inc., as nominee for Bell
America Mortgage, LLC, d/b/a Bell Mortgage;
Superior Masonry & Concrete, Inc.; Elite
Waste Disposal; et al.

Defendants.

The above-captioned matter came on for hearing before the undersigned Judge of District Court on August 5, 2009, pursuant to Plaintiff Wenzel Plumbing & Heating, Inc.'s ("Wenzel") Motion for Summary Judgment. Gary G. Fuchs, Esq. appeared on behalf of Wenzel. Steven R. Little, Esq. appeared on behalf of Defendants Bounlab Xayarath ("Xayarath"), Vatsana Phongsavath ("Phongsavath") and Mortgage Electronic Registration Systems, Inc., as nominee for Bell America Mortgage, LLC, d/b/a Bell Mortgage ("MERS"). The Court, having been fully advised in the premises, together with all of the files and proceedings herein, makes the following:

FINDINGS OF FACT

1. This mechanic's lien foreclosure action involves certain real property located in Scott County, Minnesota, legally described as follows:

Lot 18, Block 25, Countryside

(the "Property").

2. Wenzel entered into a contract or series of contracts with M.W. Johnson Construction, Inc. ("M.W. Johnson") under which Wenzel provided certain plumbing materials and labor for the improvement of the Property.

3. M.W. Johnson sold the Property to Xayarath and Phongsavath by way of a warranty deed dated July 27, 2007, recorded with the Scott County Recorder on August 7, 2007, as Document No. 779945. Xayarath and Phongsavath are the current fee owners of the Property.

4. MERS is the holder of a mortgage dated August 3, 2007, secured by the Property, given by Xayarath and Phongsavath, as mortgagors, in favor of MERS, as mortgagee, which was recorded with the Office of the Scott County Recorder on August 7, 2007, as Document No. 779946 ("MERS Mortgage").

5. Wenzel recorded a mechanic's lien statement against the Property dated August 7, 2007, in the original principal amount of \$11,195.00, recorded with the Office of the Scott County Recorder on August 10, 2007, as Document No. 780355 ("Wenzel's Mechanic's Lien Statement").

6. Wenzel's first item of improvement to the Property was May 10, 2007, and its last item of improvement to the Property was June 27, 2007.

7. Wenzel commenced Court File No. 70-CV-08-12694 on May 29, 2008, within one year of its last item of improvement to the Property.

8. Wenzel's Mechanic's Lien is valid in the original principal amount of \$11,195.00 and is prior and superior to the rights, title and interests of Xayarath, Phogsavath and MERS in the Property.

9. Plaintiff Superior Masonry & Concrete, Inc. ("Superior") is the former holder of a mechanic's lien against the Property and commenced Court File No. 70-CV-08-10431 to foreclose its mechanic's lien.

10. By Order dated October 10, 2008, this Court consolidated Court File No. 70-CV-08-126894 into one action under Court File No. 70-CV-08-10431.

11. All claims by Superior against Xayrath, Phongsavath, MERS, Wenzel and Defendant Elite Waste Disposal have been dismissed with prejudice.

12. All claims by Superior against Defendant M.W. Johnson have been dismissed without prejudice.

13. All claims by Wenzel against Superior Masonry, Defendant Keybank National Association, and Tollefson Development, Inc. have been dismissed with prejudice.

14. Defendant Elite Waste Disposal, Inc. ("Elite") recorded a mechanic's lien statement against the Property dated November 20, 2007, in the original principal amount of \$440.00, which was recorded with the Office of the Scott County Recorder on November 11, 2007, as Document No. 788384 ("Elite Mechanic's Lien").

15. Elite failed to answer Superior's Complaint or Wenzel's Complaint or otherwise appear in this action and has not commenced a separate action to foreclose its Mechanic's Lien.

16. More than one year has passed since the last item of improvement that Elite claimed it provided for the improvement to the Property.

CONCLUSIONS OF LAW

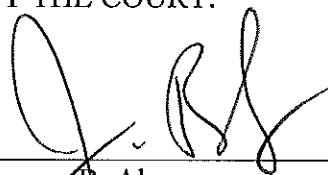
1. Wenzel is entitled to summary judgment.
2. Wenzel's Mechanic's Lien against the Property is valid and enforceable in the amount of \$11,195.00 in principal together with pre-judgment interest pursuant to Minn. Stat. § 514.135 in the amount of \$ 1080.55 through 10/20, 2009, which continues to accrue at the rate of \$ 1.23 per diem until entry of Judgment, together with attorneys' fees in the amount of \$ 4565.29 and costs and disbursements in the amount of \$ 711.24, for a total judgment of \$ ~~6357.08~~ \$17,552.08
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3. Wenzel's Mechanic's Lien is prior and superior in all respects to Xayarath's, Phongsavath's and MERS's interests in the Property.
4. Elite's Mechanic's Lien is expired and is void and of no affect against the Property pursuant to Minn. Stat. § 514.012, subd. 3.
5. Wenzel's Mechanic's Lien shall be foreclosed and the Property sold by the Sheriff of Scott County, Minnesota at a public auction in the manner provided by Minnesota Stat. § 514.15.
6. The proceeds of said sale shall be applied first to the payment of costs and expenses of the sale and then to payment of the amounts adjudged to be due and owing to Wenzel with interest at the judgment rate provided herein from the date this judgment is entered to the date of said sale.
7. The sale shall be reported to and made subject to the approval of this Court. At that time, Wenzel may make application to the Court for an additional award of attorneys' fees and costs incurred in connection with the sale.

8. All the parties herein, and all persons claiming under them or any of them, shall be forever barred and foreclosed from any equity of redemption and all right, title and interest, lien or claim in the Property, except that Xayarath, Phongsavath and their legal representatives, successors, and assigns shall have the right to redeem the Property from said sale in accordance with Minn. Stat. § 514.15 within six (6) months from the date of the order confirming said sale and persons having junior liens, specifically the holder of the MERS Mortgage, shall therefore have such redemption rights as provided by statute for junior lienholders.

ORDER FOR JUDGMENT

1. Wenzel's Motion for Summary Judgment is hereby GRANTED.
2. There is no just reason for delay of entry of final judgment as provided herein, and the District Court Administrator is directed to immediately enter final judgment in accordance with these Findings of Fact and Conclusions of Law.
3. The Scott County Recorder shall accept a certified copy of these Findings of Fact, Conclusions of Law and Order for Judgment against the Property legally described in Paragraph 1 of these Findings

BY THE COURT:



Jerome B. Abrams
Judge of District Court
Court File Nos. 70-CV-09-7343
and 70-CV-08-10431

Dated: 10-21, 2009

JUDGMENT

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE 10-23-09
GREGORY M. ESS
COURT ADMINISTRATOR, SCOTT COUNTY, MINN.

DEPUTY

